

ASSEMBLY BILL

No. 519

Introduced by Assembly Member Leno

February 16, 2005

An act to amend Section 366.26 of the Welfare and Institutions Code, relating to children.

LEGISLATIVE COUNSEL'S DIGEST

AB 519, as introduced, Leno. Parental rights.

Existing law provides that children may become dependent children of the juvenile court on the basis of abuse or neglect. Existing law specifies that any order of the court permanently terminating parental rights is conclusive and binding on the child, subject to specified notice provisions, and gives the juvenile court no power to set aside, change, or modify that order, except that the order may be appealed.

This bill would create an exception to this provision to permit a dependent child who has not been adopted after the passage of at least 3 years from termination of parental rights or is no longer adoptable, as specified, to petition the juvenile court for reinstatement of parental rights, pursuant to specified procedures.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 366.26 of the Welfare and Institutions
- 2 Code is amended to read:
- 3 366.26. (a) This section applies to children who are adjudged
- 4 dependent children of the juvenile court pursuant to subdivision
- 5 (c) of Section 360. The procedures specified herein are the

1 exclusive procedures for conducting these hearings; Part 2
2 (commencing with Section 3020) of Division 8 of the Family
3 Code is not applicable to these proceedings. Section 8714.7 of
4 the Family Code is applicable and available to all dependent
5 children meeting the requirements of that section, if the
6 postadoption contact agreement has been entered into
7 voluntarily. For children who are adjudged dependent children of
8 the juvenile court pursuant to subdivision (c) of Section 360, this
9 section and Sections 8604, 8605, 8606, and 8700 of the Family
10 Code and Chapter 5 (commencing with Section 7660) of Part 3
11 of Division 12 of the Family Code specify the exclusive
12 procedures for permanently terminating parental rights with
13 regard to, or establishing legal guardianship of, the child while
14 the child is a dependent child of the juvenile court.

15 (b) At the hearing, that shall be held in juvenile court for all
16 children who are dependents of the juvenile court, the court, in
17 order to provide stable, permanent homes for these children, shall
18 review the report as specified in Section 361.5, 366.21, or
19 366.22, shall indicate that the court has read and considered it,
20 shall receive other evidence that the parties may present, and then
21 shall make findings and orders in the following order of
22 preference:

23 (1) Terminate the rights of the parent or parents and order that
24 the child be placed for adoption and, upon the filing of a petition
25 for adoption in the juvenile court, order that a hearing be set. The
26 court shall proceed with the adoption after the appellate rights of
27 the natural parents have been exhausted.

28 (2) On making a finding under paragraph (3) of subdivision
29 (c), identify adoption as the permanent placement goal and order
30 that efforts be made to locate an appropriate adoptive family for
31 the child within a period not to exceed 180 days.

32 (3) Appoint a legal guardian for the child and order that letters
33 of guardianship issue.

34 (4) Order that the child be placed in long-term foster care,
35 subject to the periodic review of the juvenile court under Section
36 366.3.

37 In choosing among the above alternatives the court shall
38 proceed pursuant to subdivision (c).

39 (c) (1) If the court determines, based on the assessment
40 provided as ordered under subdivision (i) of Section 366.21 or

subdivision (b) of Section 366.22, and any other relevant evidence, by a clear and convincing standard, that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption. The fact that the child is not yet placed in a preadoptive home nor with a relative or foster family who is prepared to adopt the child, shall not constitute a basis for the court to conclude that it is not likely the child will be adopted. A finding under subdivision (b) or paragraph (1) of subdivision (e) of Section 361.5 that reunification services shall not be offered, under subdivision (e) of Section 366.21 that the whereabouts of a parent have been unknown for six months or that the parent has failed to visit or contact the child for six months or that the parent has been convicted of a felony indicating parental unfitness, or, under Section 366.21 or 366.22, that the court has continued to remove the child from the custody of the parent or guardian and has terminated reunification services, shall constitute a sufficient basis for termination of parental rights unless the court finds a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances:

(A) The parents or guardians have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.

(B) A child 12 years of age or older objects to termination of parental rights.

(C) The child is placed in a residential treatment facility, adoption is unlikely or undesirable, and continuation of parental rights will not prevent finding the child a permanent family placement if the parents cannot resume custody when residential care is no longer needed.

(D) The child is living with a relative or foster parent who is unable or unwilling to adopt the child because of exceptional circumstances, that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment and the removal of the child from the physical custody of his or her relative or foster parent would be detrimental to the emotional well-being of the child. This subparagraph does not apply to any child who is living with a nonrelative and who is either (i) under six years of age or (ii) a

1 member of a sibling group where at least one child is under six
2 years of age and the siblings are, or should be, permanently
3 placed together.

4 (E) There would be substantial interference with a child's
5 sibling relationship, taking into consideration the nature and
6 extent of the relationship, including, but not limited to, whether
7 the child was raised with a sibling in the same home, whether the
8 child shared significant common experiences or has existing
9 close and strong bonds with a sibling, and whether ongoing
10 contact is in the child's best interest, including the child's
11 long-term emotional interest, as compared to the benefit of legal
12 permanence through adoption.

13 If the court finds that termination of parental rights would be
14 detrimental to the child pursuant to subparagraph (A), (B), (C),
15 (D), or (E), it shall state its reasons in writing or on the record.

16 (2) The court shall not terminate parental rights if at each and
17 every hearing at which the court was required to consider
18 reasonable efforts or services, the court has found that reasonable
19 efforts were not made or that reasonable services were not
20 offered or provided.

21 (3) If the court finds that termination of parental rights would
22 not be detrimental to the child pursuant to paragraph (1) and that
23 the child has a probability for adoption but is difficult to place for
24 adoption and there is no identified or available prospective
25 adoptive parent, the court may identify adoption as the
26 permanent placement goal and without terminating parental
27 rights, order that efforts be made to locate an appropriate
28 adoptive family for the child within a period not to exceed 180
29 days. During this 180-day period, the public agency responsible
30 for seeking adoptive parents for each child shall, to the extent
31 possible, ask each child who is 10 years of age or older who is
32 placed in a group home for six months or longer from the date
33 the child entered foster care, to identify any individuals, other
34 than the child's siblings, who are important to the child, in order
35 to identify potential adoptive parents. The public agency may ask
36 any other child to provide that information, as appropriate.
37 During the 180-day period, the public agency shall, to the extent
38 possible, contact other private and public adoption agencies
39 regarding the availability of the child for adoption. During the
40 180-day period, the public agency shall conduct the search for

1 adoptive parents in the same manner as prescribed for children in
2 Sections 8708 and 8709 of the Family Code. At the expiration of
3 this period, another hearing shall be held and the court shall
4 proceed pursuant to paragraph (1) or (3) of subdivision (b). For
5 purposes of this section, a child may only be found to be difficult
6 to place for adoption if there is no identified or available
7 prospective adoptive parent for the child because of the child's
8 membership in a sibling group, or the presence of a diagnosed
9 medical, physical, or mental handicap, or the child is the age of
10 seven years or more.

11 (4) (A) If the court finds that adoption of the child or
12 termination of parental rights is not in the best interest of the
13 child, because one of the conditions in subparagraph (A), (B),
14 (C), (D), or (E) of paragraph (1) or in paragraph (2) applies, the
15 court shall either order that the present caretakers or other
16 appropriate persons shall become legal guardians of the child or
17 order that the child remain in long-term foster care. Legal
18 guardianship shall be considered before long-term foster care, if
19 it is in the best interests of the child and if a suitable guardian can
20 be found. A child who is 10 years of age or older who is placed
21 in a group home for six months or longer from the date the child
22 entered foster care, shall be asked to identify any individuals,
23 other than the child's siblings, who are important to the child, in
24 order to identify potential guardians. The agency may ask any
25 other child to provide that information, as appropriate.

26 (B) If the child is living with a relative or a foster parent who
27 is willing and capable of providing a stable and permanent
28 environment, but not willing to become a legal guardian, the
29 child shall not be removed from the home if the court finds the
30 removal would be seriously detrimental to the emotional
31 well-being of the child because the child has substantial
32 psychological ties to the relative caretaker or foster parents.

33 (C) The court shall also make an order for visitation with the
34 parents or guardians unless the court finds by a preponderance of
35 the evidence that the visitation would be detrimental to the
36 physical or emotional well-being of the child.

37 (5) If the court finds that the child should not be placed for
38 adoption, that legal guardianship shall not be established, and
39 that there are no suitable foster parents except exclusive-use
40 homes available to provide the child with a stable and permanent

1 environment, the court may order the care, custody, and control
2 of the child transferred from the county welfare department to a
3 licensed foster family agency. The court shall consider the
4 written recommendation of the county welfare director regarding
5 the suitability of the transfer. The transfer shall be subject to
6 further court orders.

7 The licensed foster family agency shall place the child in a
8 suitable licensed or exclusive-use home that has been certified by
9 the agency as meeting licensing standards. The licensed foster
10 family agency shall be responsible for supporting the child and
11 providing appropriate services to the child, including those
12 services ordered by the court. Responsibility for the support of
13 the child shall not, in and of itself, create liability on the part of
14 the foster family agency to third persons injured by the child.
15 Those children whose care, custody, and control are transferred
16 to a foster family agency shall not be eligible for foster care
17 maintenance payments or child welfare services, except for
18 emergency response services pursuant to Section 16504.

19 (d) The proceeding for the appointment of a guardian for a
20 child who is a dependent of the juvenile court shall be in the
21 juvenile court. If the court finds pursuant to this section that legal
22 guardianship is the appropriate permanent plan, it shall appoint
23 the legal guardian and issue letters of guardianship. The
24 assessment prepared pursuant to subdivision (g) of Section 361.5,
25 subdivision (i) of Section 366.21, and subdivision (b) of Section
26 366.22 shall be read and considered by the court prior to the
27 appointment, and this shall be reflected in the minutes of the
28 court. The person preparing the assessment may be called and
29 examined by any party to the proceeding.

30 (e) The proceeding for the adoption of a child who is a
31 dependent of the juvenile court shall be in the juvenile court if
32 the court finds pursuant to this section that adoption is the
33 appropriate permanent plan and the petition for adoption is filed
34 in the juvenile court. Upon the filing of a petition for adoption,
35 the juvenile court shall order that an adoption hearing be set. The
36 court shall proceed with the adoption after the appellate rights of
37 the natural parents have been exhausted. The full report required
38 by Section 8715 of the Family Code shall be read and considered
39 by the court prior to the adoption and this shall be reflected in the
40 minutes of the court. The person preparing the report may be

1 called and examined by any party to the proceeding. It is the
2 intent of the Legislature, pursuant to this subdivision, to give
3 potential adoptive parents the option of filing in the juvenile
4 court the petition for the adoption of a child who is a dependent
5 of the juvenile court. Nothing in this section is intended to
6 prevent the filing of a petition for adoption in any other court as
7 permitted by law, instead of in the juvenile court.

8 (f) At the beginning of any proceeding pursuant to this section,
9 if the child or the parents are not being represented by previously
10 retained or appointed counsel, the court shall proceed as follows:

11 (1) In accordance with subdivision (c) of Section 317, if a
12 child before the court is without counsel, the court shall appoint
13 counsel unless the court finds that the child would not benefit
14 from the appointment of counsel. The court shall state on the
15 record its reasons for that finding.

16 (2) If a parent appears without counsel and is unable to afford
17 counsel, the court shall appoint counsel for the parent, unless this
18 representation is knowingly and intelligently waived. The same
19 counsel shall not be appointed to represent both the child and his
20 or her parent. The public defender or private counsel may be
21 appointed as counsel for the parent.

22 (3) Private counsel appointed under this section shall receive a
23 reasonable sum for compensation and expenses, the amount of
24 which shall be determined by the court. The amount shall be paid
25 by the real parties in interest, other than the child, in any
26 proportions the court deems just. However, if the court finds that
27 any of the real parties in interest are unable to afford counsel, the
28 amount shall be paid out of the general fund of the county.

29 (g) The court may continue the proceeding for not to exceed
30 30 days as necessary to appoint counsel, and to enable counsel to
31 become acquainted with the case.

32 (h) (1) At all proceedings under this section, the court shall
33 consider the wishes of the child and shall act in the best interests
34 of the child.

35 (2) In accordance with Section 349, the child shall be present
36 in court if the child or the child's counsel so requests or the court
37 so orders. If the child is 10 years of age or older and is not
38 present at a hearing held pursuant to this section, the court shall
39 determine whether the minor was properly notified of his or her

1 right to attend the hearing and inquire as to the reason why the
2 child is not present.

3 (3) (A) The testimony of the child may be taken in chambers
4 and outside the presence of the child's parent or parents, if the
5 child's parent or parents are represented by counsel, the counsel
6 is present, and any of the following circumstances exist:

7 (i) The court determines that testimony in chambers is
8 necessary to ensure truthful testimony.

9 (ii) The child is likely to be intimidated by a formal courtroom
10 setting.

11 (iii) The child is afraid to testify in front of his or her parent or
12 parents.

13 (B) After testimony in chambers, the parent or parents of the
14 child may elect to have the court reporter read back the testimony
15 or have the testimony summarized by counsel for the parent or
16 parents.

17 (C) The testimony of a child also may be taken in chambers
18 and outside the presence of the guardian or guardians of a child
19 under the circumstances specified in this subdivision.

20 (i) (1) Any order of the court permanently terminating
21 parental rights under this section shall be conclusive and binding
22 upon the child, upon the parent or parents and upon all other
23 persons who have been served with citation by publication or
24 otherwise as provided in this chapter. After making the order, the
25 juvenile court shall have no power to set aside, change, or modify
26 it, *except as provided in paragraph (2)*, but nothing in this
27 section shall be construed to limit the right to appeal the order.

28 (2) *A dependent child who has not been adopted after the*
29 *passage of at least three years from the date the court terminated*
30 *parental rights may petition the juvenile court to reinstate*
31 *parental rights pursuant to the procedure prescribed by Section*
32 *388. The child may file the petition prior to the expiration of this*
33 *three-year period if all parties stipulate that the child is no*
34 *longer adoptable. If it appears that the best interests of the child*
35 *may be promoted by reinstatement of parental rights, the court*
36 *shall order that a hearing be held and shall give prior notice, or*
37 *cause prior notice to be given, to the social worker or probation*
38 *officer and to the child's attorney of record, or, if there is no*
39 *attorney of record for the child, to the child and to his or her*
40 *former parent or parents whose parental rights were terminated*

1 *and the child's tribe, if applicable, by means prescribed by*
2 *Section 388 unless a different manner is prescribed by the court.*
3 *The juvenile court shall grant the petition if it finds by a*
4 *preponderance of the evidence that the child is no longer likely to*
5 *be adopted and that reinstatement of parental rights is in the*
6 *child's best interest.*

7 (j) If the court, by order or judgment, declares the child free
8 from the custody and control of both parents, or one parent if the
9 other does not have custody and control, the court shall at the
10 same time order the child referred to the State Department of
11 Social Services or a licensed adoption agency for adoptive
12 placement by the agency. However, a petition for adoption may
13 not be granted until the appellate rights of the natural parents
14 have been exhausted. The State Department of Social Services or
15 licensed adoption agency shall be responsible for the custody and
16 supervision of the child and shall be entitled to the exclusive care
17 and control of the child at all times until a petition for adoption is
18 granted. With the consent of the agency, the court may appoint a
19 guardian of the child, who shall serve until the child is adopted.

20 (k) Notwithstanding any other provision of law, the
21 application of any person who, as a relative caretaker or foster
22 parent, has cared for a dependent child for whom the court has
23 approved a permanent plan for adoption, or who has been freed
24 for adoption, shall be given preference with respect to that child
25 over all other applications for adoptive placement if the agency
26 making the placement determines that the child has substantial
27 emotional ties to the relative caretaker or foster parent and
28 removal from the relative caretaker or foster parent would be
29 seriously detrimental to the child's emotional well-being.

30 As used in this subdivision, "preference" means that the
31 application shall be processed and, if satisfactory, the family
32 study shall be completed before the processing of the application
33 of any other person for the adoptive placement of the child.

34 (l) (1) An order by the court that a hearing pursuant to this
35 section be held is not appealable at any time unless all of the
36 following applies:

37 (A) A petition for extraordinary writ review was filed in a
38 timely manner.

1 (B) The petition substantively addressed the specific issues to
2 be challenged and supported that challenge by an adequate
3 record.

4 (C) The petition for extraordinary writ review was summarily
5 denied or otherwise not decided on the merits.

6 (2) Failure to file a petition for extraordinary writ review
7 within the period specified by rule, to substantively address the
8 specific issues challenged, or to support that challenge by an
9 adequate record shall preclude subsequent review by appeal of
10 the findings and orders made pursuant to this section.

11 (3) The Judicial Council shall adopt rules of court, effective
12 January 1, 1995, to ensure all of the following:

13 (A) A trial court, after issuance of an order directing a hearing
14 pursuant to this section be held, shall advise all parties of the
15 requirement of filing a petition for extraordinary writ review as
16 set forth in this subdivision in order to preserve any right to
17 appeal in these issues. This notice shall be made orally to a party
18 if the party is present at the time of the making of the order or by
19 first-class mail by the clerk of the court to the last known address
20 of a party not present at the time of the making of the order.

21 (B) The prompt transmittal of the records from the trial court
22 to the appellate court.

23 (C) That adequate time requirements for counsel and court
24 personnel exist to implement the objective of this subdivision.

25 (D) That the parent or guardian, or their trial counsel or other
26 counsel, is charged with the responsibility of filing a petition for
27 extraordinary writ relief pursuant to this subdivision.

28 (4) The intent of this subdivision is to do both of the
29 following:

30 (A) Make every reasonable attempt to achieve a substantive
31 and meritorious review by the appellate court within the time
32 specified in Sections 366.21 and 366.22 for holding a hearing
33 pursuant to this section.

34 (B) Encourage the appellate court to determine all writ
35 petitions filed pursuant to this subdivision on their merits.

36 (5) This subdivision shall only apply to cases in which an
37 order to set a hearing pursuant to this section is issued on or after
38 January 1, 1995.

39 (m) Except for subdivision (j), this section shall also apply to
40 minors adjudged wards pursuant to Section 727.31.

O